Now, the defendant's counsel submitted to me that her client's only defence was that the plaintiff's claim is time-barred.

Wee Tiang Tang's case as quoted by the defence counsel turned on whether the letter written by the bank (not from the defendants in that case) operated as an acknowledgment of the plaintiff's claim. If it did, time for the plaintiff would run on the date of acknowledgment as provided under section 26(2) of the Limitation Ordinance No. 4 of 1953. In that case it was held that the bank's letter was not a sufficient acknowledgment and for that reason the plaintiff's claim in that case was held to be statute-barred.

The plaintiff's claim in the instant case is to recover land and the relevant section under the Limitation Ordinance pertaining to this point is section 26(1) which reads as follows:

"26. (1) Where there has accrued any right to recover land or to enforce a mortgage or charge in respect of land or personal property, and —

(a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or

(b) in the case of any such action by a mortgagee or chargee the person in possession as aforesaid or the person liable for the debt secured by the mortgage or charge makes any payment in respect thereof, whether of principal or interest,

the right shall be deemed to have accrued on and not before the date of the acknowledgement or last payment."

In this case the defendant's previous solicitors' letter reads as follows:

"Kami mewakili Y.M. Tengku Mariah binti Sultan Sulaiman, No. 10, Jalan Trengganu, Bukit Persekutuan, Kuala Lumpur.

2. Kami diarah merujuk kepada surat tuan dan puan bertarikh pada 13hb. Disember, 1977 dan memaklumkan bahawa Yang Mulia itu menegas sekali-kali tidak terlintas mengengkar dari Perjanjian yang telah diperbuat bagi menjual tanah tersebut diatas kepada tuan dan puan. Sungguh pun perkara ini sudah berapa lama dahulu berlaku, Yang Mulia itu tetap berpegang kepada Perjanjian yang dimeterikan berkenaan tanah tersebut diatas.

3. Kami juga diarah memaklumkan bahawa geran tanah tersebut telah dikeluarkan tetapi malangnya telah lama kehilangan semasa perpindahan keluarga kebeberapa tempat. Walau bagaimana pun Yang Mulia sanggup menanda tangani apa sahaja dokumen yang dikehendakki bagi memindah tanah tersebut kepada tuan dan puan melalui kami.

4. Kami juga diarah memaklumkan bahawa, munkin kekeliruan tuan dan puan ada menyebut bahawa tanah KRM 1225, Lot 335 telah juga dijual kepada tuan dan puan. Dalam hal ini Yang Mulia menegas pada ingatannya tanah ini tidak pernah dijual kepada sesiapa dan sukacita kami kiranya tuan dan puan dapat membuktikan perkara ini kepada kami."

The plaintiff is suing for KRM 1224, Lot 334 and not KRM 1225, Lot 335 which the defendant stated she could not recollect selling to anyone.

I think this letter is sufficient acknowledgment for all intents and purposes and as such I am of the opinion that the plaintiff's claim is not statute-barred.

Accordingly, I entered judgment for the plaintiff and as I considered that the plaintiff ought to have sued the defendant much earlier, I disallowed her the costs of this suit.

Claim allowed.

Solicitors: *Wan Abdul Muttalib & Co.; Syed Ibrahim & Co.*

PUBLIC PROSECUTOR v. RAJAMAH

[R.Cr.J. (Chan J.C.) April 6, 1979]

[Perak — Criminal Revision No. 11 of 1979]

Criminal Law and Procedure — Road Traffic — Parking — Excess charge and Surcharge — No power to impose excess charge/Surcharge — Whether Municipality of Ipoh is appropriate authority — Road Traffic (Attendant Parking Places) (Ipoh Municipal Council) Order, 1969 — Whether order valid — Interpretation and General Clauses Ordinance 1948, s. 23 — Road Traffic Ordinance, 1958, ss. 58, 62 & 63.

Administrative Law — Subsidiary legislation — Ultra vires — Road Traffic (Attendant Parking Places) (Ipoh Municipal Council) Order, 1969 — Road Traffic Ordinance, 1958, s. 62.

In this case the defendant was convicted on a charge of failure to pay the excess charge/surcharge incurred in respect of the parking of a motor vehicle, which was alleged to be an offence under paragraph 13A(2) of the Road Traffic (Attendant Parking Places) (Ipoh Municipal Council) Order, 1969 and punishable under paragraph 27 of the said order. The order was made by the Municipality of Ipoh in purported exercise of power under section 62 of the Road Traffic Ordinance, 1958. The matter was called up for revision.

Held: (1) as the Municipality of Ipoh has not been declared an authority for the purposes of section 62 of the Road Traffic Ordinance, 1958, it had no power to make the order;

(2) the appropriate authority has no power to provide for punishment or to impose penalties for any contravention of an order made under section 62 of the Road Traffic Ordinance, 1958, nor has it power to create offences. Contravention of the order is punishable under section 62(7) of the Road Traffic Ordinance. Therefore paragraphs 13(A) and 27 of the Order which purport to provide for punishment in excess of that provided in section 62(7) of the Ordinance are *ultra vires* and void;

(3) Paragraphs 13(A)(3) and 24 of the Order are also *ultra vires* as they purport to alter the law in seeking to create certain presumptions not to be found in the existing law.

Cases referred to:-

(1) *Ward* v. *James* [1965] 2 W.L.R. 455.

(2) *Liversidge* v. *Anderson* [1942] A.C. 206, 245.

(3) *In re Grosvenor Hotel, London (No. 2)* [1965] 1 Ch. 1210.

CRIMINAL REVISION.

Lee Lim Huat (Deputy Public Prosecutor) for the Public Prosecutor.

Chan J.C. (delivering oral judgment): In so far as this revision is concerned, I shall read only the relevant parts of section 62 of the Road Traffic Ordinance, 1958:

"62. (1) Any appropriate authority may by order published in the Gazette provide suitable parking places for vehicles....

....

(3) An order under subsection (1) may prescribe —

(a) the vehicles or class of vehicles which may use such parking place and the period during which and the conditions subject to which such parking place or stand may be used; and

(b) *the charge, if any, to be made for the use of such parking place.* (my emphasis).

(4) Where any charge for the use of such parking place is to be made or intended to be made pursuant to any order under this section, such order shall specify —

(i) ....

(ii) ....

and may further make provision in a parking place for any of the matters following:

....

(f) *the charges to be levied in respect of the use thereof and the manner of its collection;*" (my emphasis).

In pursuance of the powers under the abovementioned section 62(1) of the Road Traffic Ordinance, 1958, the Municipal Councillors of the Municipality of Ipoh (hereinafter referred to as "the Municipality of Ipoh") declaring themselves as the appropriate authority made an Order known as the Road Traffic (Attendant Parking Places) (Ipoh Muncipal Council) Order, 1969 (hereinafter referred to as "the Order"). This is wrong. The Municipality of Ipoh are not empowered to call or make themselves an appropriate authority. Only the Minister for local government can do this; see section 58 of the Road Traffic Ordinance, 1958. There is nothing in the Order to indicate that the Municipality of Ipoh were declared an appropriate authority by the Minister and, therefore, there is nothing to suggest that there is anything for me to take judicial notice of.

Now I shall return to the Order. The articles in the Order which are applicable to this case are as follows:

Article 7

"Any person using a parking place during the times specified in column 4 of the First Schedule for the parking of any motor vehicles shall obey all lawful directions given to him by any parking attendant on duty at such parking place and shall pay the prescribed charge as soon as the vehicle has been parked by handing over the money to the parking attendant on duty who shall issue an official receipt therefor on which shall be written the vehicle's registration number, the amount paid and the time which the vehicle is authorised to be parked at such parking place."

Article 9

"No person shall park or cause or permit to be parked any motor vehicle in any parking place unless he has the receipt of the parking attendant indicating that such payment has been made."

Article 10

"No person shall continue to park or cause or permit to continue to be parked any motor vehicle in a parking space after expiry of the period during which such motor vehicle is authorised to be parked in such parking space as stated in the official receipt issued by the parking attendant."

By section 62(3)(b) and (4)(f) of the Road Traffic Ordinance, 1958 the appropriate authority are empowered to levy a charge for the use of the parking space provided for vehicles under the Order and article 7 is the result of a valid exercise of such power. Articles 9 and 10 are *intra vires* section 62(3)(a) of the Ordinance. A contravention of any one of the articles 7, 9 and 10 of the Order would constitute an offence punishable under section 62(7) of the Road Traffic Ordinance, 1958.

In the instant case, the defendant, Rajamah, pleaded guilty to the following charge:

"That you, being the registered owner of motor vehicle No. AJ 1255 did incur an excess charge/surcharge of $5.00 in respect of Advice Note No. 754302 for parking the said vehicle at Space No. 38 Jubilee Street/Road, Ipoh on November 19, 1977, and that you failed to pay the said excess charge/surcharge within 7 days of a notice served on you on October 10, 1978, and that you have thereby incurred an increased excess charge/surcharge of $10.00 under paragraph 13A(2) of the Road Traffic (Attendant Parking Places) (Ipoh Municipal Council) Order, 1969 an offence punishable under paragraph 27 of the aforesaid Order."

She was convicted and fined $50 in default 5 days imprisonment. In addition she was ordered to pay the $10 surcharge. According to the charge, the defendant as the registered owner of the motor vehicle was alleged to have incurred an increased excess charge/surcharge of $10 under article 13A(2) of the Order and therefore had committed an offence punishable under article 27 of the Order.

Article 13A of the Order is as follows:

"(1) *Any person who acts in contravention of paragraph 9 or 10 of this Order* (my emphasis) shall, on being notified in writing of such contravention, pay within two days from the date of such notification and at the place specified therein —

(i) an excess charge of $2 for every hour or fraction thereof during which the vehicle has been parked in a parking place without payment of the prescribed fee;

(ii) a surcharge of $2 for every hour or any fraction thereof during which the vehicle has remained parked in the parking space after expiry of the authorised parking period.

Provided that such excess charge or surcharge shall not exceed $5 on any one occasion in respect of that particular parking space and may be paid to the Cashier, Collection Booth on the same street or Municipal Treasurer's Department, Cooper Street, Ipoh who shall issue a receipt therefor.

And provided further that if a person acts in contravention of paragraph 9 or 10 of this Order, this paragraph shall not apply if such person pays not later than 2 days from the day on which such contravention has occurred, the parking attendant on duty or to the Municipal Treasurer as aforesaid the prescribed charge in respect of any period parked beyond the period stated in the official receipt issued by the parking attendant.

(2) A person in charge of a motor vehicle which is parked in a parking space who fails to pay the excess charge or surcharge as required by sub-paragraph (1) of paragraph 13A within the prescribed time shall thereafter be liable to pay in respect of that particular parking space the excess charge or surcharge which shall not exceed on any one occasion a sum of ten dollars; and failure to pay such sum within seven days thereafter shall be an offence under this Order.

(3) In this Order the expression 'person in charge of a motor vehicle' shall unless the contrary be shown within seven days of the notice be presumed to be the person in whose name the motor vehicle is registered as on the date of such notice."

Although articles 7, 9 and 10 are *intra vires*, article 13A(1) and (2) purported to impose penalties for contravention of articles 9 and 10 of the Order. Surely, if there has been any contravention of article 9 or 10 or 7 of the Order then that contravention becomes an offence which is punishable under section 62(7) of the Road Traffic Ordinance, 1958 which is as follows:

"62. (7) If any person without lawful excuse contravenes or fails to comply with an order made under this section he shall be guilty of an offence and shall be liable to a fine not exceeding one hundred dollars."

The appropriate authority, in this case, the Municipality of Ipoh, have no power under section 62(3)(b) and (4)(f) to provide for punishment or to impose penalties for any contravention of any order made under section 62 and neither have they the power to create offences. In *Ward* v. *James*,[1] a rule which purported to state that a "discretion" given to a court by the parent Act should be "absolute" was declared *ultra vires*. *Per* Lord Denning M.R. at page 464, "Section 6 of the Act of 1933 speaks of 'discretion' simply. The rule adds the word 'absolute' to the statute, and, in adding, alters it. That it has no right to do. . . . In my opinion, therefore, the word 'absolute' either adds nothing, or, if it adds something, it is *ultra vires*. It can be ignored." Article 13A(1) and (2) cannot repeal, extend, alter or contradict express

provisions in section 62 on which the article derived its authority. The express provisions I am referring to are subsections (3)(b), (4)(f) and (7). For the same reasons, article 27 of the order is also invalid because it contradicts and is inconsistent with section 62(7). In fact article 27 provides for a punishment in excess of that provided in section 62(7). In such a situation the courts can declare the articles i.e., 13(A)(1) and (2), and 27, void.

There is nothing in section 23(b) of the Interpretation and General Clauses Ordinance, 1948, which derogates from anything I have just said. Section 23(b) is as follows:

"23. When an Act of Parliament or Enactment confers power on any authority to make subsidiary legislation, the following provisions shall, *unless the contrary intention appears,* (my emphasis) have effect with reference to the making and operation of such subsidiary legislation...

(b) there may be annexed to the breach of any subsidiary legislation such penalty not exceeding one thousand dollars, or such term of imprisonment of either description not exceeding six months, or both, as the authority making the subsidiary legislation may think fit;"

Section 62(7) is clear beyond a peradventure that any contravention of an order made under section 62 shall be punished under the subsection. There could be no other punishment or penalty, otherwise, section 62(7) would be otiose.

It is therefore illegal for the Municipality of Ipoh to collect the excess charge/surcharge under the invalid articles 13A(1) and (2). Those who have paid such excess charge/surcharge are entitled to ask for a refund.

Articles 13A(3) and 24 of the order are also *ultra vires*. Section 62(3)(b) and (4)(f) only empowered the appropriate authority to levy charges in respect of the use of a parking space and the manner of its collection. These words cannot be taken to mean that the said authority have the power to alter existing law by creating a presumption that the registered owner of a motor vehicle is deemed to be, in article 13A(3), the person in charge of a motor vehicle, and in article 24, the person liable if the actual driver is not traced. There is here a complete *non sequitur*. I cannot do better than echo the words of Lord Atkin in *Liversidge* v. *Anderson.*[2] "I know of only one authority which might justify this method of construction":— "But 'glory' doesnt' mean 'a nice knock-down argument.'" Alice objected. "When I use a word," Humpty Dumpty said in rather a scornful tone, "it means just what I choose it to mean — neither more nor less." "The question is," said Alice, "whether you can make words mean so many different things." "The question is," said Humpty Dumpty, "which is to be master — that's all." (Through the Looking Glass, ch. vi). The Municipality of Ipoh are not to be masters. Articles 13A(3) and 24 are clear examples of exceeding the authority granted in the parent Act, in the instant case, section 62(3)(b) and (4)(f) of the Road Traffic Ordinance, 1958 and the courts will not hesitate to strike down any subordinate legislation which is *ultra vires*: *In re Grosvenor Hotel, London (No. 2).*[3] "It follows, therefore, that R.S.C., O.24, r.15, if and in so far as it purports to alter the law, is *ultra vires.*" *per* Salmon L.J., at page 1262. And at page 1243, *per* Lord Denning M.R., "What then are the powers of the Rule Committee? they can make rules for regulating and prescribing the procedure and practice of the court, but they cannot alter the rules of evidence, or the ordinary law of the land." Borrowing the words of Salmon L.J., it follows, therefore, that articles 13A(3) and 24, in so far as it purports to alter the law is *ultra vires.*

In the result, I would therefore quash the conviction and set aside the sentence and I order that the fine and surcharge which have been paid by the defendant to be refunded to her.

Perhaps at this juncture, a few words of advice may not be inappropriate. The Municipality of Ipoh can still deal with infringements of articles 7, 9 and 10 of the order. The proper thing to do is for offenders to be prosecuted under section 62(7) or to have the offence compounded under the amended section 147 of the Road Traffic Ordinance, 1958.

Conviction quashed; sentence set aside.

RE APPLICATION BY DUNLOP ESTATES BHD. DUNLOP ESTATES BHD. v. ALL MALAYAN ESTATES STAFF UNION

[O.C.J. (Mohamed Azmi J.) May 22, 1979]
[Kuala Lumpur — Originating Motion No. 59 of 1978]

Industrial Law — Appointment — Grading on recruitment — Hospital Assistant recruited as Grade I Hospital Assistant — Paid salary of Grade II Hospital Assistant — Whether award of Industrial Court can relate back to date of recruitment even though more than six months before date of reference — Time-frame and non-time frame awards — Industrial Relations Act, 1967, s. 30(7).

Administrative Law — Application for certiorari to quash award of Industrial Court — Appointment — Grading or recruitment — Whether award of Industrial Court can relate back to date of recruitment even though more than six months before date of reference — Industrial Relations Act, 1967, s. 30(7).

Interpretation of statutes — Liberal interpretation — Intention of legislature — Purpose of legislation.

In this case the Industrial Court in its award had stated that the employee was recruited as a Grade I Hospital Assistant and therefore shall be paid the salary of the grade from October 1, 1970 when he was recruited. In the application for *certiorari,* the applicants agreed that the employee should be employed in Grade I and it was argued that order of the Industrial Court could not under section 30(7) of the Industrial Relations Act, 1967, be made retrospective earlier than six months from November 8, 1976, the date on which the dispute was referred to the court by the Minister.

Held: (1) section 30(7) of the Industrial Relations Act, 1967, does not apply in this case having regard to the nature of the award. Since the Industrial Court has correctly decided that the employee was in fact employed and did in fact perform the duties of Grade I Hospital Assistant from the date of his recruitment, the court has no alternative but to order that he should be paid the salary and allowance of Grade I Hospital Assistant from that date. From the very nature of the award, the question of restrospectivity did not arise in this case, and as such the provision of section 30(7) did not apply and the Industrial Court had not acted in excess of jurisdiction by making the payment effective from October 1, 1970, which was the date of the employee's recruitment;

(2) the scope of sections 30(7) of the Act must be given a liberal interpretation having regard to the object of the Industrial Relations Act. All non-time-frame awards must of necessity be exempted from the entire provision of section 30(7) unless they create mischief and lead to absurdity and inconsistency with the other provisions of the Act.